

## TALKING POINTS

### **CWA 404(g) - General**

- As you may be aware, the Clean Water Act is structured to have states and tribes take the lead in managing our nation's aquatic resources, in collaboration with the federal government.
  - A personal priority of Assistant Administrator Ross's is to see more states and tribes assume administration of the Clean Water Act section 404 dredged or fill permitting program for [certain] waters within their jurisdiction. He is leading the charge to facilitate and actively support state and tribal efforts to assume administration this program.
  - Last Spring, in the Spring Regulatory Agenda, the EPA announced it is undertaking a rulemaking to modernize the Section 404 state assumption process of the CWA Section 404 permitting program. Through this effort, EPA is seeking to:
    - clarify assumption requirements,
    - improve the usability of the regulations, and
    - foster a greater long-term effectiveness by the states and authorized tribes in assuming the program.
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  - The national rulemaking will follow-up on recommendations from a federal advisory committee that focused specifically on which waters a state or tribe assumes permitting authority for under section 404 of the CWA.
  - In November and December 2018, EPA hosted pre-rule input sessions with the states and tribes seeking input on areas of the regulations which could benefit from clarity and how that clarity could be provided.
- By empowering states and tribes to take on this permitting responsibility, greater efficiencies can be achieved in infrastructure and other permitting decisions while continuing to protect the environment.
- EPA is currently drafting proposed regulatory updates, with the goal to propose later this fall, and finalize in 2021.

Other points (if asked):

This spring, EPA solicited public comment on whether the Agency should reconsider its current position that consultation under the Endangered Species Act Section 7(a)(2) is not required when the EPA approves a State or Tribe's request to assume the Section 404 dredged and fill permit program under Section 404(h) of the Clean Water Act (CWA) Section 7 of the ESA applies to federal agency actions in which there is discretionary federal involvement or control. The comment period closed July 6, 2020.